

Department of State

§ 96.85

Hague Conference on Private International Law.

§ 96.83 Suspension or cancellation of accreditation or approval by the Secretary.

(a) The Secretary must suspend or cancel the accreditation or approval granted by an accrediting entity when the Secretary finds, in the Secretary's discretion, that the agency or person is substantially out of compliance with the standards in subpart F of this part and that the accrediting entity has failed or refused, after consultation with the Secretary, to take action.

(b) The Secretary may suspend or cancel the accreditation or approval granted by an accrediting entity if the Secretary finds that such action:

- (1) Will protect the interests of children;
- (2) Will further U.S. foreign policy or national security interests; or
- (3) Will protect the ability of U.S. citizens to adopt children under the Convention.

(c) If the Secretary suspends or cancels the accreditation or approval of an agency or person, the Secretary will take appropriate steps to notify both the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.84 Reinstatement of accreditation or approval after suspension or cancellation by the Secretary.

(a) An agency or person may petition the Secretary for relief from the Secretary's suspension or cancellation of its accreditation or approval on the grounds that the deficiencies necessitating the suspension or cancellation have been corrected. If the Secretary is satisfied that the deficiencies that led to the suspension or cancellation have been corrected, the Secretary shall, in the case of a suspension, terminate the suspension or, in the case of a cancellation, notify the agency or person that it may reapply for accreditation or approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may reapply to any accrediting entity with jurisdiction

over its application. If the Secretary terminates a suspension or permits an agency or person to reapply for accreditation or approval, the Secretary will so notify the appropriate accrediting entity. If the Secretary terminates a suspension, the Secretary will also take appropriate steps to notify the Permanent Bureau of the Hague Conference on Private International Law of the reinstatement.

(b) Nothing in this section shall be construed to prevent the Secretary from withdrawing a cancellation or suspension if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.85 Temporary and permanent debarment by the Secretary.

(a) The Secretary may temporarily or permanently debar an agency from accreditation or a person from approval on the Secretary's own initiative, at the request of DHS, or at the request of an accrediting entity. A debarment of an accredited agency or approved person will automatically result in the cancellation of accreditation or approval by the Secretary, and the accrediting entity shall deny any pending request for renewal of accreditation or approval.

(b) The Secretary may issue a debarment order only if the Secretary, in the Secretary's discretion, determines that:

- (1) There is substantial evidence that the agency or person is out of compliance with the standards in subpart F of this part; and
- (2) There has been a pattern of serious, willful, or grossly negligent failures to comply, or other aggravating circumstances indicating that continued accreditation or approval would not be in the best interests of the children and families concerned. For purposes of this paragraph:

(i) "The children and families concerned" include any children and any families whose interests have been or may be affected by the agency's or person's actions;

(ii) A failure to comply with § 96.47 (home study requirements) shall constitute a “serious failure to comply” unless it is shown by clear and convincing evidence that such noncompliance had neither the purpose nor the effect of determining the outcome of a decision or proceeding by a court or other competent authority in the United States or the child’s country of origin; and

(iii) Repeated serious, willful, or grossly negligent failures to comply with § 96.47 (home study requirements) by an agency or person after consultation between the Secretary and the accrediting entity with respect to previous noncompliance by such agency or person shall constitute a pattern of serious, willful, or grossly negligent failures to comply.

§ 96.86 Length of debarment period and reapplication after temporary debarment.

(a) In the case of a temporary debarment order, the order will take effect on the date specified in the order and will specify a date, not earlier than three years later, on or after which the agency or person may petition the Secretary for withdrawal of the temporary debarment. If the Secretary withdraws the temporary debarment, the agency or person may then reapply for accreditation or approval to the same accrediting entity that handled its prior application for accreditation or approval. If that accrediting entity is no longer providing accreditation or approval services, the agency or person may apply to any accrediting entity with jurisdiction over its application.

(b) In the case of a permanent debarment order, the order will take effect on the date specified in the order. The agency or person will not be permitted to apply again to an accrediting entity for accreditation or approval, or to the Secretary for termination of the debarment.

(c) Nothing in this section shall be construed to prevent the Secretary from withdrawing a debarment if the Secretary concludes that the action was based on a mistake of fact or was otherwise in error. Upon taking such action, the Secretary will take appropriate steps to notify the accrediting

entity and the Permanent Bureau of the Hague Conference on Private International Law.

§ 96.87 Responsibilities of the accredited agency, approved person, and accrediting entity following suspension, cancellation, or debarment by the Secretary.

If the Secretary suspends or cancels the accreditation or approval of an agency or person, or debars an agency or person, the agency or person must cease to provide adoption services in all Convention cases. In the case of suspension, it must consult with the accrediting entity about whether to transfer its Convention adoption cases and adoption records. In the case of cancellation or debarment, it must execute the plans required by §§ 96.33(e) and 96.42(d) under the oversight of the accrediting entity, and transfer its Convention adoption cases and adoption records to other accredited agencies, approved persons, or a State archive, as appropriate. When the agency or person is unable to transfer such Convention cases or adoption records in accordance with the plans or as otherwise agreed by the accrediting entity, the accrediting entity will so advise the Secretary who, with the assistance of the accrediting entity, will coordinate efforts to identify other accredited agencies or approved persons to assume responsibility for the cases, and to transfer the records to other accredited agencies or approved persons, or to public domestic authorities, as appropriate.

§ 96.88 Review of suspension, cancellation, or debarment by the Secretary.

(a) Except to the extent provided by the procedures in § 96.84, an adverse action by the Secretary shall not be subject to administrative review.

(b) Section 204(d) of the IAA (42 U.S.C. 14924(d)) provides for judicial review of final actions by the Secretary. When any petition brought under section 204(d) raises as an issue whether the deficiencies necessitating a suspension or cancellation of accreditation or approval have been corrected, procedures maintained by the Secretary pursuant to § 96.84(a) must first be exhausted. A suspension or cancellation